FOR MYSORE STATE

Home (1954) Department.

R. SERIES.

G.O. No. 2439

Dated 16.8.54

Passed

[Despatch Abstract.]

Cr. jus — Appeal against acquittal S. Kanara dist. — C.C. 410/54/A.F Prohibition — Applm. — Sanctioned

Special.
Ref.C.No.4541/54/C5.

S.Kanara Addl.Dt.Magistrate (I)'s Office, Mangalore dated 21-7-54.

From

Sri V.Seetharama Serval, B.A.,
Addl.Dt.Magistrate (I)S.Kanara.

To

The Secretary to Government,
Home Department,
Fort St.George,
Madras-9.

Sir,

CRIMINAL JUSTICE - C.C.No.410/54 -on the file of the Additional First Class Magistrate (Prohibition) - South Kanara -Appeal against acquittal proposals - submitted.

100567

-:o:-

Re In C.C.No.410/54 on the file of the Additional First Class Magistrate (Prohibition)South Kanara the accused by a driver of a bus was charged by the Prohibition Sub Inspector Padavu under Section 4A of the Madras Prohibition Act as the accused was found in a public place in a state of intoxication. The case was tried summarily by the Magistrate, and hence copies of the depositions of witnesses are not available. Two witnesses were examined in this case. The Sub Inspector P.W.2 deposed that on 28.4.54 at 8 P.M he saw the accused in the open in a state of intoxication and therefore he arrested him and sent him for examination. P.W.1, the Registered Medical Practitioner deposed that he examined the accused at 8.30 P.M. on the same day and observed smell of liquor in his breath redness of eyes and pupils dilated, speech incoherent and gait unsteady. In his opinion the accused had consumed liquor and was under the influence of it. He had also given a medical certificate to this effect. In the cross examination however he stated that the smell of liquor would be forthcoming if the consumer had consumed any other drug containing alchol. The Magistrate held that the prosecution had not proved that the smell of liquor in the breath of the accused came only from arrack. He acquitted the accused relying on the decision of the Madras High Court as reported in A.I.R.Madras 376 (Vol.41 Cr.Notes.154

April 1954. In the above case the High Court hold that the prosecution should prove that the smell came only from I.D.Arrack if the inference is to be drawn about consuming liquor from the smell alone, and that the other symptoms like red eyes also must be proved to be due only to the effect of liquor. In the case referred to in judgment of the High Court the accused seems to have been rudely awakened from sleep and questioned, and that accounted for the redness of eyes etc. The decision relied on by the Additional First Class Magistrate may be applicable if the accused was found drunk in his house, as in that case the provisions of the 2nd part of Section 4-A would be applicable. The facts of the present case come within the purview of the 1st part of Section 4-A, the accused having been found drunk in the open, and as such the cause of intoxication is ~~immaterial~~ material. I have consulted the Public Prosecutor, South Kanara in the matter. He is of opinion that this is a fit case to be taken up on appeal. The acquittal of the accused will have far reaching effect on the successful enforcement of the provisions of Section 4(1) (j) and Section 4A of the Madras Prohibition Act. I therefore request that the Public Prosecutor, Madras may be directed to file an appeal in the High Court against the order of the Additional First Class Magistrate(Prohibition) South Kanara in C.C.No.410/54.

2.A copy of the charge sheet judgment in C.C.No.410/54, opinion of the A.P.P.I Mangalore and the Public Prosecutor South Kanara are enclosed in duplicate.

Yours faithfully

For Addl.Dt.Magistrate(I)
South Kanara.

DN/22/7

PETTY CASE CHARGE SHEET.
****

STATION: PADAVU
CIRCLE MANGALORE

TO
THE ADDITIONAL FIRST CLASS MAGISTRATE
(PROHIBITION)MANGALORE

Consumptive Number	Name address and occupation of the person	By whom detected and when	When bail	Charge	Date on which put up before the magistrate	Sentence	REMARKS
13/54	M.Gangadhara Shetty S/O M.Pakeera Shetty Driver of Bus M.D.M.3712 Residing at Marnamikatte Mangalore-2	By S.I. of Pro. Padavu 28.4.54 8 A.M. P.M.	29/4/54 8.15A.M. to appear before the court today at 10A.M.	Sec.4A of the M.P.Act, on 25.4.54 at about 8 P.M. the accused was found in a state of intoxication at Paldama locality of Kudupu village. He has committed an offence punishable under the above section of law.		Acquitted Sec. 245 (i) Cr.Pc. (Sd) T.M.Pinto A.Y.C.M.(Pro) 31-5-54.	

Witnesses;
1. Sri V.V.Abdulla Shafeeq
   S.I.of Prohibition
   Padavu.

2. Dr.S.Umanath Suvarna
   Registered Medical
   Practitioner Padavu.

/True copy/

For Addl.Dt.Magistrate (I)
South Kanara.

N.Dis.64/54

Retransmitted:

The accused in this case was charge-sheeted for an offence under section 4-A of the M.P.Act by the S.I of Prohibition, Padavu, as he was found in a state of intoxication in a public place in Kudpu village. The Doctor who had examined the accused immediately has certified in unquivocal terms that he was smelling liquor and was under its influence. This certificate gives all the important symptoms observable in a drunken person. As rightly observed by Justice Ramaswami in the unreported decision, any prudent and reasonable man cannot avoid coming to the conclusion in the instant case that the accused was under the influence of liquor and was drunk, having regard to the cumulative effect of all the symptoms mentioned in the certificate. The Doctor seems to have conceded that the symptoms taken individually may be due to other causes, though it is not clear if the prosecution had elicited from him the reasonable inference that might be drawn collectively.

On a reading of the facts of the decision relied on by the learned Additional I class Magistrate it appears to me a case charged and convicted under section 4(1)(j) M.P.Act, reported in 1952 M.W.N.Cr.Page 277, as throughout reference is made to consumption and smell. Further, it is not clear if the accused in that case was caught in the open or in his house. The facts of the present case come within the purview of the 1st part of section 4-A, the accused having been found drunk in the open and as such, the cause of intoxication is immaterial. The decision relied on by the Additional I class Magistrate may be applicable if the accused was found drunk in his house, as in that case the provisions of the 2nd part of Section 4-A would be applicable.

The High court of Bombay in a case arising under the Bombay Prohibition act, for breach of provisions similar to those of section 4(1)(j) of Madras Prohibition act, had held that the burden of proving the consumption of non prohibited liquor or drink is on the person pleading the same, that being a fact peculiarly within his knowledge. It appears that this view has been confirmed by the Supreme court.

Having regard to the facts of the present case, the misapplication of the case-law, the conflicts of views between Two Judges (both sitting singly), the importance of law involved and the far reaching effect in the successful enforcement of the provisions of section 4(1)(j) and 4-A of M.P.Act, I feel that this is a fit case to be taken up to the High court in appeal.

Being an appeal against acquittal, the Government will have to be moved within two months from the date of judgment i.e by 30-7-54 after obtaining the opinion of the Public Prosecutor,Mangalore

Copies of depositions requested for by me may please be forwarded to the Public Prosecutor.

Mangalore
25.6.1954

Sd/xx xx
Assistant Public Prosecutor
Grade I

-True copy-

For Addl.Dt.Magistrate(I).

Copy of letter dated 12.7.1954 from ~~the~~ Sri K.K. Rakhu, Public Prosecutor,

C.C.No.410.54. A.F.C.I.Prohibition.

Appeal against acquittal opinion.

The opinion given by Sri P.Ramachandra Rao, Assistant Public Prosecutor, Grade I, appears to be quite correct. The medical certificate given by the doctor and the other evidence in the case would make any reasonable person come to the conclusion that the accused was found in a state of intoxication in a public place.

As regards the law involved, there are conflicting decisions by the judges of our own high court on the question of proof required to prosecute a man successfully under section 4(A) of the Madras Prohibition Act. However this appears to be a fit case to be taken up on appeal against acquittal.

Sd/xx xx

/True copy/ 4/7 — 24/7/54

For Addl.Dt.Magistrate.

24/7

Government of Madras,
Home department.

Dis 116/54

Endorsement no. 100567/Cts I/54 dated 27.7.54

Referred to the Public Prosecutor, Madras, for early remarks.

Assistant Secretary

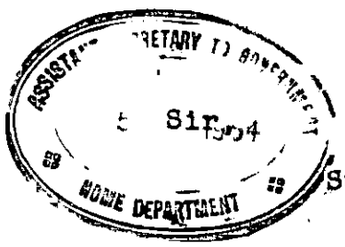
26.7.54.

To

The Public Prosecutor,
Madras (with encl: pp 1-9 c/f.
to be returned with his reply)

Sri V.T; Rangaswamy Ayyangar,
B.A., B.L.,
Public Prosecutor,
Madras.

The Secretary to Government,
Home Department,
Madras.



Opinion No. 116/54 dated 3rd August 1954

Sub: Appeal against acquittal - C.C. 410/54 on the file of the Additional First Class Magistrate - South Kanara - Forwarding opinion.

105352/54

With reference to endorsement No. 100567/Cts I/54-1, dated 27-7-54, I give below my opinion in the above matter.

2. The papers received for reference are returned herewith.

Opinion.

The Respondent who was charged under Sec. 4 A of the Prohibition Act has been acquitted on the ground that the prosecution has failed to prove that the consumed liquor. If it is merely intended that this wrong approach should be corrected, I have no objections to file the appeal because there are other cases where appeals had been filed in similar circumstances where the Magistrate erroneously thought that the onus of proof was on the prosecution to establish that the accused consumed liquor, while the Supreme Court in a recent case held to the contrary. If however it is considered that the law could be get clarified in other case then there is no need to file an appeal against acquittal.

V. T. Rangaswamy

Public Prosecutor. 3.8.54

3/8.

13

HOME DEPARTMENT.

Courts I

[C. No./00567/54]

G.O. Rt. No. 2439 Dated 15. 8. 54

S. Kamara dist.

CRIMINAL JUSTICE—Appeal against acquittal/ C.C. No. 410 of 1954 on the file of the A.F.C.M., Prohibition, S. Kamara Application—Sanctioned.

Read :—(1) From the ~~D.M.~~/A.D.M. (I)./~~Commissioner office, Madras.~~ S. Kamara Ref. C. No. 4541/54/C.5 dated 21.7.54.

(2) From the P.P./~~S.P.~~ Madras, Opn. No. 116 of 1954, dated 3.8. 1954.

ORDER.

Under Section 417 of the Code of Criminal Procedure, 1898, the Public/~~State~~ Prosecutor, Madras, is requested to present an appeal to the High Court against the acquittal by the A.F.C.M., Prohibition, S. Kamara of the accused in C.C. No. 410 of 1954 on his file.

To the ~~P.P./S.P.~~ Madras. with encl: pp. at (A)

~~Copy to the D.M./~~ A.D.M. (I). S. Kamara.

~~Commissioner of Police, Madras.~~

NOTE.—The draft order above follows the opinion of the Public/~~State~~ Prosecutor, Madras, at p. 11 c.f.

Date of judgment 31. 5. 54.

Three months time expires on 30. 8. 54.

Six months time expires on 30. 11. 54.

x. judgt. copies.

In the High Court of Judicature at Madras.
Thursday, the Seventh day of April,
One thousand nine hundred and fifty five.

Present:--

The Honourable Mr.Justice Somasundaram.

Criminal Appeal No.568 of 1954

The Public Prosecutor ... Appellant.

-versus-

K.Gangadhara Shetty ... Respondent (Accused)

19 APR 1955
HOME DEPARTMENT

Appeal under Section 417 of the Code of Criminal Procedure, 1898, against the acquittal of the aforesaid respondent (Accused) by the Additional I Class Magistrate (Prohibition) of South Kanara in CC.No.410 of 1954 on his file.

This Appeal coming on for hearing on Thursday the 24th February 1955, upon perusing the Petition of Appeal and the record of the evidence and proceedings before the said Court of Additional I Class Magistrate and upon hearing Mr.R.Ganthanam for the Public Prosecutor the appellant herein and Mr.M.Santhosh,Advocate for the respondent (Accused) engaged by the court under Rule 228 of the Criminal Rules of Practice and Orders,1931 and having stood over for consideration till this day, the court delivered the following:--

J u d g m e n t:--

This is an appeal by the State against the acquittal of the respondent by the First Class Magistrate,South Kanara. The case was tried as a summary case.The evidence is, therefore, not printed. The only document that is before me is the medical certificate, Ex.P-1. Judgment being the only other record.

The accused was charged for an offence under Sec.4(A) of the Madras Prohibition Act: and, according to the judgment, which is the only record, the evidence given by the Prohibition Sub Inspector is to the effect

that on 28-4-1954 at 8 p.m. he saw the accused in the open in a state of intoxication. He, therefore, arrested him and sent him for medical examination which was done by P.W.1.

The accused was the driver of a City Bus between Bangalore and Doreswara. The evidence of the doctor is that he examined the accused at 8-30 p.m. on 28-4-1954 and noticed smell of liquor in his breath, redness of eyes and pupils dilated; pulse 76, speech incoherent and the gait unsteady. All these are noted in Ex.A-1 the certificate which he gave. According to the doctor, the accused had consumed liquor and was under its influence. In cross-examination it was elicited that the smell of liquor may be due to any other drugs if taken by the accused and the redness of the eyes might also be due to other causes; similarly the incoherent speech and the gait may be attributed to other causes. The accused has nothing to say in his examination and he did not examine any defence witnesses.

The learned magistrate relying on the decision of this Court in In Re. Shanmugan (1) acquitted the accused. In the case relied on by the magistrate, the evidence of the doctor was that old sugar juice was taken which may ~~smell~~ smell like I.M. arrack; and the other symptoms noted namely red eyes and talking at random were consistent with the conduct of a person who was rudely awakened from his sleep and questioned in the manner he has been done. It was therefore held that it was the duty of the prosecution to prove that the smell was only from the I.M. arrack, if the inference is to be drawn about consuming liquor from the smell alone. As that was not done and that the other symptoms were not proved to be due to the effect

(1) 1956 AIR Mad. 374

of liquor, the accused was acquitted.

In this case the respondent relies upon a decision of the Supreme Court reported in [illegible] KESHAV -v- BOMBAY State (P) and contends that the prosecution has has not discharged the onus. In the above case my Lord the Chief Justice of the Supreme Court states:

> "The bare circumstance that a citizen accused of an offence under Sec.66(b) is smelling of alcohol is compatible both with his innocence as well as his guilt. It is a neutral circumstance. The smell of alcohol may be due to the fact that the accused had contravened the enforceable part of Sec.12(b) of the Prohibition Act. It may well be due also to the fact that he had taken alcohol which fell under the unenforceable and inoperative part of the section. That being so it is the duty of the prosecution to prove that the alcohol of which he was smelling was such that it came within the category of prohibited alcohols and the onus was not discharged or shifted by merely proving a smell of alcohol.
>
> The onus thus cast on the prosecution may be light or heavy according to the circumstances of each case. The intensity of the smell itself may be such that it may negative its being of a permissible variety. Expert evidence may prove that consumption in small doses of medicinal or other preparations permitted cannot produce the smell or a state of body or mind amounting to drunkenness. Be that as it may, the question is one of fact to be decided

-C- [illegible] (1959) AIR SC.123

according to the circumstance of each case. (underlining is mine.)"

It is clear from the above decision that from the bare circumstance of smell alone, the inference that the accused has consumed prohibited liquor cannot be drawn, as it is consistent both with his taking prohibited liquor as well as other preparations which were not prohibited, though they might have also contained liquor and might fall within the definition of liquor under the Act. In this case apart from the smell of liquor, we have other symptoms as well such as, the redness of the eyes, pupils being dilated, incoherent speech and unsteady gait. Though each one of these circumstances may be attributable to causes other than the consumption of liquor, the question is that is the cumulative effect of all these symptoms? If an inference could be drawn that the cumulative effect of all the symptoms is due to the consumption of liquor, then in my opinion the onus lies on the accused to show that he had consumed such other liquid or liquids which would produce the other symptoms in him. Even in the case of mere smelling of liquor as pointed out in the decision of the Supreme Court the intensity of the smell itself may be such that it may negative its being of a permissible variety. This only suggests that even from the smell itself if it could be established that it was due to consumption of prohibited liquor, then there was no need to prove further. But in this case the additional symptoms clearly establish that all these were due to consumption of prohibited liquor, and the evidence of the doctor is that the accused was under the influence of liquor. To produce these symptoms considerable quantity of liquor must have been taken

and it is not an unreasonable inference to draw that all these symptoms could not have been produced by taking in any medicinal or toilet preparations.

Balakrishna Aiyer, J. in a similar case, in Criminal Appeal No.388 of 1954 has come to the same conclusion. He observed:

> "In my view, taken together,-- and that is the right way of looking at the matter-- the symptoms which were found on the accused on the night of 9-10-1953 decisively establish that he had committed attack".

I am in entire agreement with Balakrishna Ayyar, J. about the manner in which the circumstances of the case have to be approached. In this case the approach by the lower court is not correct. The lower court was therefore in error in acquitting the accused and the order is liable to be set aside.

The offence in this case is said to have taken place in April 1954 and for an offence of this nature I do not think that the ends of justice require that he should be punished at this distance of time, he having been acquitted by the lower court. It is in this view, though the acquittal was wrong, I do not propose to interfere with it. But I must record a finding that the acquittal is wrong and the State was perfectly justified in filing the appeal for enunciation of the principles of law for the guidance of lower courts. Since the view has been expressed for "guidance of the lower courts, I do not think it necessary to reverse the acquittal.

The appeal is dismissed with the observations mentioned above.

(M. V.T.Pandarathi,
County Registrar (Appellate).

-/True Copy/-

S. Jagadeesan
Sub-Assistant Registrar (App.Side).

13
11

a To

To

1) The Additional I Class Magistrate, South Bangalore (with records).

2) Sri. Throthe the Lt. Magistrate (Judicial) South Kanara, Mangalore.

3) The Public Prosecutor, Madras (3 copies).

4) Copy to Administrative Department for necessary action.

5) The Inspector-General of Police, Madras.

Dated:- 7-4-1955

C.A.No.568-3-1954.

Public Prosecutor's Office,
Madras, dated 16-4-55.

Forwarded to the Secretary to Government, Home Department with reference to G.O.Rt.No.2439, Home, dated 16th August,1954.

V.T.Rangaraj

PublicProsecutor. 18/4

To

The Secretary to Government,
Home Department, Madras.

Judgment

Crl.App.No.568 of 1954

Eliminating the appeal against the order of acquittal of the accused in CC.No.410 of 1954 on the file of the Addl.First Class Magistrate (Prohibition) South Kanara

C.No. 46089/55.

Home (Cbi) dept

Memo No 46089 cbi/55-1 dated 28/4/5

Appeal against acquittal C.A.
568/54, High court, Madras. copy
of jr dgt - grtd communicated.

Ref: From the collector of S.
kamara, 4541/54. C.5 Dt 21.7

2) G.O. R. 2439, Home, Dt 16.8

A copy of the jr dgt. of
the High court, Madras, in C.A.No.56
of 1954 on its file is communicated
to the Collector of S. kamara for informat

CENTRAL DESPATCH BRANCH
Despatched by ... Dept.
Date ... 195

Collector of S. kamara
(w. copy of pp. 1-9 e/f.)

C.No. 100567/54

Home (Ck I) dept.

Crl. Jus.- Appeal against acquittal- S.Kamara dist.- C.C.No. 410/54/A.F.C.M. (Prohibition) S.Kamara - Proposals.

pp 1 & 2 c.f.

Ref: From the A.D.M.(I)., S.Kamara, Ref. C.No. 4541/54/C.S.D) 21.7.54.

ibid

The A.D.M.(I)., S.Kamara, has submitted proposals for filing an appeal against the acquittal of the accused by the A.F.C.M., S.Kamara, in C.C.No. 410 of 54 on his file. The case may, in the first instance, be referred to the P.P., Madras. The endt. submitted is for signature.

Appeal time expires on 30.11.54. (Vide "H" on p. 6 c.f.)

26.7.54

27.7.54

26/7/54

Home Endt

28/7/54

Dy. Sec. to Govt. 27.7.54

(From the P.P., Madras, Opn. No. 116/54. D) 3.8.54)

H on p. 18 c.f.

The accused in this case was charged for an offence u/s. 4A of the Prohibition Act and was acquitted by the A.F.C.M., (Prohibition), S.Kamara, in C.C.No. 410/54 on this file. The A.D.M.(I), S.Kamara, submitted proposals for filing an appeal against this acquittal. The P.P., Madras who was consulted, is of the opinion that no appeal need be filed if the Govt. consider that the law would get clarified

Y on p. 2 of (A)

pp 1 & 2 c.f.

p 17 c.f.

by the H.Ct. in the other appeals preferred by the State against the acquittal of the accused by the lower courts on the identical ground viz. that the prosecution has failed to prove that the accused did consume liquor. Taking the recent S.Cts' verdict to the contrary which is i.e. the onus of proof is not on the prosecution side, it may be presumed that the H.Ct. will set aside the acquittal in the other cases & would thus clarify the law involved. Therefore no appeal need be filed in this case. Subject to orders Submitted for orders, therefore, whether the question of filing an appeal in this case may be dropped. pl.

7-8-54 It has however to be pointed out that even if the H.C. lays down in other cases, the correct approach in accordance with the decision of the Supreme Court, unless an appeal is preferred in this case against the decision of the A.F.C.R. the acquittal of the accused on a wrong appreciation of the fact of, i.e. the onus of proof of consumption of liquor is on the prosecution, will stand. It would be necessary to file an appeal in this case to secure a conviction of the offender against the prohibition laws. For orders.

7/8/54 The object of an appeal is not merely to correct errors of law

p 11.c.f.

100567/54

AM

but also to remedy miscarriage of justice. The P.P concedes that the acquittal was not proper & that the appellate court will interfere. An appeal may (to be filed.

A

AB
7.8.54

[illegible]
6/8

r.t. A above, the draft order submitted is for approval.

Rec'd 6/12/18 3pm

Thro. Prohibition

AB
12.8.54

[illegible]
12/8/54

[illegible]
12/8/54

[illegible]
12/8/

C.No. 46089/55.

Home (Cts I) Dept.

Appeal against acquittal - C.A. 588/54, High Court, Madras - Copy of judgt.

Ref: G.O.R. 2439, Home, dt. 16.8.54.

The State filed an appeal against the acquittal of the accused by the A.F.C.M., (Prohibition) S. Kamara, in C.C. No. 410 of 1954 on his file. The accused in this case was prosecuted for an offence under sec 4(A) of the Madras Prohibition Act. The High court, in C.A. No. 588 of 1954 on its file, has held that the lower court had erred in acquitting the accused. However, in view of the fact that the offence was committed quite long ago, it did not consider it necessary to reverse the acquittal and has therefore dismissed the State Appeal. It may be noted in this connection that the High court has recorded its finding that the acquittal is wrong and that the State was perfectly justified in filing the appeal for enunciation of the principles of law for the guidance of lower courts.

A copy of the High courts' judgt. in the C.f. may

46089/55.

be communicated to the collector of S. Kanara, who submitted proposals for filing an appeal against the acquittal of the accused in this case. The draft memo submitted accordingly is for approval.

21.4.55.

22.4.55

[Issued as M: 46089 dt. I/55-1 dt. 25.4.55]

Through Prohibition

The pp. may now be closed and added to G.O.R. 2439, Home, dt. 16.8.57 at (B)

6.5.55.